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U.S. PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

The opinion in support of the decision being entered today  
was **not** written for publication in and  
is **not** binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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**Ex parte R. MICHAEL MCGRADY and R. BARRIE SLAYMAKER, JR.**

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Appeal No. 2006-1861  
Application No. 09/428,035

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ON BRIEF

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Before OWENS, LEVY and NAPPI **Administrative Patent Judges**.

NAPPI, **Administrative Patent Judge**.

**DECISION ON APPEAL**

This is a decision on appeal under 35 U.S.C. §134(a) of the final rejection of claims 1 through 28 which constitute all the claims in the application. For the reasons stated *infra* we affirm-in-part the examiner's rejection of these claims.

### **Invention**

The invention relates a method for monitoring an inventory of medical use items.

See pages 3 and 4 of appellants' specification.

Claim 1 is representative of the invention and reproduced below:

1. A method comprising the steps of:
  - (a) storing in a data store in operative connection with a computer, data representative of a plurality of patients for whom medical items may be used;
  - (b) generating a report, wherein the report includes machine readable indicia corresponding to at least one of the patients and machine readable indicia corresponding to at least one item prescribed for the patient;
  - (c) reading the machine readable indicia on the report corresponding to a patient with a reading device;
  - (d) inputting to the computer, data representative of a medical item, wherein the computer is operative to include in the data store, data representative of the taking of the medical item for use by the patient;
  - (e) inputting data to the computer representative of giving the medical item to the patient, wherein the computer is operative to include in the data store, data representative of the medical item having been given to the patient.

### **References**

The references relied upon by the examiner are:

Moulding Jr.	4,604,847	Aug. 12, 1986
Gombrich	4,857,716	Aug. 15, 1989

### **Rejection at Issue**

Claims 4, 6 through 8, 11 through 13, 16 through 18 and 22 through 27 stand rejected under 35 U.S.C. § 102 (b) as being anticipated by Gombrich. The examiner's rejection is set forth on pages 3 through 8 of the answer. Claims 1 through 3, 5, 14, 15 and 28 stand rejected under 35 U.S.C. § 103 (a) as being unpatentable over Gombrich in view of Moulding. The examiner's rejection is set forth on pages 8 through 11 of the

answer. Claims 9, 10 and 19 through 21 stand rejected under 35 U.S.C. § 103 (a) as being unpatentable over Gombrich. The examiner's rejection is set forth on pages 11 through 14 of the answer. Throughout the opinion we make reference to the briefs, the answer and the final Office action for the respective details thereof.

### **Opinion**

We have carefully considered the subject matter on appeal, the rejections advanced by the examiner and the evidence of anticipation and obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, appellants' arguments set forth in the brief (filed November 4, 2003), the reply brief (filed June 25, 2004), along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer (mailed April 8, 2004.)

With full consideration being given to the subject matter on appeal, the examiner's rejections and the arguments of appellants and the examiner, and for the reasons stated *infra* we sustain the examiner's rejection of claims 1 through 20 and 22 through 28. However, we will not sustain the examiner's rejection of claim 21.

### **Rejection Under 35 U.S.C. § 102**

#### **Rejection of claim 4.**

Appellants argue, on page 10 of the brief, that Gombrich does not teach inputting data into a portable terminal representative of a medical item being given to a patient and transferring the data from the portable terminal to a computer. Appellants assert that Gombrich's bar code reader does not constitute a portable terminal as recited in independent claim 4. On page 11 of the brief, appellants assert that Gombrich distinguishes between a terminal and a barcode reader, citing Gombrich's discussion of a terminal item 45 and barcode reader item 48. Further, appellants assert that the examiner's reliance on the Microsoft Dictionary is improper. Appellants present similar arguments on pages 4 and 5 of the reply brief.

Appellants' arguments have not persuaded us of error in the examiner's rejection and we find that Gombrich teaches a portable terminal. Gombrich teaches a system for relating items with patients and ensuring that the item corresponds to the identified patient. See abstract. Gombrich teaches several embodiments of the invention, as described generically in column 2, lines 18 through 22 “[t]he input means includes a portable terminal having a bar code reader for scanning the code of the first identification device to identify the patient and the scanning code of the second identification devices.” These portable terminals transmit received information to receivers in the patient's room which then transmit the information to a computer system. See column 2, lines 22-33 and column 9, lines 8-40. In the first embodiment the portable terminal is item 48 and is identified as a barcode reader. See figure 1, 11 and 12, note from the figures the reader contains two elements a wand and a body with a keypad. In a second embodiment, shown in figure 21, the system makes use of Radio Frequency (RF) tags to identify items and patients, these tags are read by portable hand held terminals item 224. See generally column 18, lines 24 through 68, and figure 21. In another embodiment, shown in figure 26, Gombrich teaches that the barcode reader item 48 may have all components mounted in a single housing, item 322 and is referred to as a portable terminal. See also column 22, lines 15 through 49. Further, Gombrich teaches that the portable terminal has a memory that allows a review of medical data stored therein. See column 3, lines 26 through 30. Thus, while Gombrich does not explicitly identify item 48 as a portable terminal, we find ample evidence of record to support the examiner's finding that Gombrich teaches that barcode reader item 48 is a portable terminal.

Appellants argue, on page 11 and 12 of the brief, that Gombrich does not teach the claimed feature of “reading the machine readable indicia on the report corresponding to a patient with a reading device.” Specifically, appellants assert that the Gombrich's teaching of labels on a sheet is not a report and does not meet this limitation. Appellants present similar arguments on pages 6 through 8 of the reply brief.

Appellants' arguments have not persuaded us of error in the examiner's rejection. In analyzing the scope of the claim, office personnel must rely on appellants' disclosure to properly determine the meaning of the terms used in the claims. *Markman v. Westview Instruments, Inc.*, 52 F3d 967, 980, 34 USPQ2d 1321, 1330 (Fed. Cir. 1995). Claim 4 recites a "report". Appellants' specification on pages 14, 90, 91 and 124 discuss many things that can be in a report, but appellants' specification does not identify any characteristics that make a collection of data a report. From the discussions of reports on pages 14, 90, 91 and 124, we consider the term report to be used to describe a document containing information. We note that claim 4 further recites that the report "includes machine readable indicia corresponding to at least one of the patients" and machine readable indicia corresponding to at least one item prescribed for the patient. We consider that the labels of Gombrich teach this limitation. Note: Gombrich teaches that for unique drugs a label with patient barcode, drug barcode and data relating to the administration of the drug will be printed and placed on the drug package. See column 13, line 65 through column 14, line 21. Thus, we find ample evidence to support the examiner's finding that Gombrich teaches the claimed report.

Appellants argue, on page 12 of the brief, that Gombrich does not teach storing or transferring data representative of the giving of a medical item to a patient. Appellants assert that with Gombrich's system, the scanning of bar codes may not result in the giving of a medical item to a patient, relying on the Gombrich's teaching, in column 15, lines 58 through 65, of the system operation when a discrepancy is noted. As such, appellants assert that "[t]here is no evidence that a teaching of inputting data representative of giving a medical item to a patient, to a portable terminal, storing data representative of the giving of the medical item in the portable terminal, and transferring data representative of the giving of the medical item from the portable terminal to a computer is 'necessarily present' in Gombrich." Appellants present similar arguments on pages 5 and 6 of the reply brief.

We are not persuaded by appellants' arguments as they are not commensurate with the scope of the claim. Claim 4, recites "inputting to the computer, data representative of a medical item, wherein the computer is operative to include in the data store, data representative of the taking of the medical item for use by the patient; [and] inputting data to the computer representative of giving the medical item to the patient . . . wherein the computer is operative to include in the data store, data representative of the medical item having been given to the patient." Thus, claim 4 recites storing data representative of "taking an item for use by the patient" and "representative of the medical item having been given to the patient." We note that claim 4 does not require every scan to result in the "giving of a medical item to a patient."

We find that Gombrich teaches that as the pharmacist fills the prescription the pharmacist scans the labels of the patient's files and the drugs, this data is then entered into the computer system. See column 13, lines 57 through column 14, line 39. We consider this teaching of Gombrich to teach entering a record that a medical item is taken for use by the patient. Further, Gombrich teaches that when the nurse or doctor administers the medication to the patient, giving the medical item to the patient, the nurse scans the label on the medication, the information on the label is then transmitted to the computer. See generally column 15. If there is a discrepancy, a red light may light up providing a warning, the nurse can override the warning, and the computer record will record that the drug was administered. Further, Gombrich teaches "administration of the drug will be automatically recorded when the green status light 122c or other appropriate indication appears . . . unless the nurse presses a button on the bar code reading device 48 to indicate that the treatment did not occur." See column 16, lines 3 through 8. Thus, we find ample evidence of record to support the examiner's find that Gombrich teaches recording taking and giving of a medical item to a patient.

For the forgoing reasons we are not persuaded of error in the examiner's rejection of claim 4 and we sustain the examiner's rejection of claim 4 under 35 U.S.C. § 102 (b) as being anticipated by Gombrich.

**Rejection of claims 6, 7, 8, 11, 13, 18, 22, 23, 24 and 25.**

Appellants state on page 13 of the brief: "Claim 6 depends from claim 4. Appellants' arguments in support of the patentability of claim 4 are incorporated herein by reference. Gombrich further does not teach (along with the features of claim 4) reading machine readable indicia with a terminal reading device in the manner recited." On pages 13 through 18 of the brief, appellants present similar statements directed to claims 7, 8, 11, 13, 18, 22, 23, 24 and 25, which merely point out the differences in that the claims cover. (We note, on pages 10 and 11 of the reply brief, appellants provide a more in-depth argument as to the separate patentability of claim 18 than provided in the appeal brief. While the reply brief is not the appropriate venue to first raise arguments directed to the separate patentability of a claim, we nonetheless note that as discussed *supra* with respect to claim 4, we find that the claim 18 limitations of memory and storage of data representative of giving a medical item to a patient are taught by Gombrich.)

We do not consider this to be a separate argument under 37 C.F.R § 1.192(c). 37 C.F.R § 1.192(c) states:

For each ground of rejection which appellant contests and which applies to a group of two or more claims, the Board shall select a single claim from the group and shall decide the appeal as to the ground of rejection on the basis of that claim alone unless a statement is included that the claims of the group do not stand or fall together and, in the argument under paragraph (c) (8) of this section, appellant explains why the claims of the group are believed to be separately patentable. Merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable

Nonetheless, the examiner has made specific findings on pages 4, 5 and 6 of the answer concerning the teachings of Gombrich and the limitations of claims 6, 7, 8, 11, 13, 18, 22, 23, 24 and 25. Appellants' statements on pages 13 through 18 of the brief do not address the examiner's findings other than those address *supra* with respect to claim 4. Accordingly, we are not persuaded of an error in the examiner's rejection of claims 6, 7, 8, 11, 13, 18, 22, 23, 24 and 25 and we sustain the examiner's rejection of 6, 7, 8, 11, 13, 18, 22, 23, 24 and 25 under 35 U.S.C. § 102 (b) as being anticipated by Gombrich.

**Rejection of claim 12.**

Appellants argue, on page 14 of the brief, that Gombrich does not teach a report that includes both machine readable indicia corresponding to at least one of the patients and machine readable indicia corresponding to the at least one medical item. Appellants' state: “[t]he Action admits (on page 12, first paragraph) that Gombrich does not teach the recited feature. The Action further admits (on page 17, last paragraph) that the combined teachings of Gombrich and Moulding are required for the recited feature. It follows that Gombrich does not teach reading machine readable indicia on the report with a terminal reading device.” Appellants present similar arguments on pages 8 and 9 of the reply brief.

We do not find appellant's arguments persuasive. Claim 12 recites “step (b) further comprises including in the report, machine readable indicia corresponding to at least one medical item prescribed for the patient” and claim 4, upon which claim 12 ultimately depends, recites step “(b) generating a report, wherein the report includes machine readable indicia corresponding to at least one of the patients.” We note Gombrich teaches, in column 14, lines 7 through 21, that in the case of a unique drug, the pharmacist will create a custom barcode label which will list among other things ingredient drugs and patient's name. As discussed *supra* we consider these labels with barcodes to meet appellants' claimed reports. Thus, we find ample evidence to support the examiner's finding that Gombrich teaches a report that includes both machine readable indicia corresponding to at least one of the patients and one medical item. Accordingly, we sustain the examiner's rejection of claim 12 under 35 U.S.C. § 102 (b) as being anticipated by Gombrich.

**Rejection of claim 16.**

Appellants argue, on pages 14 and 15 of the brief, that “Gombrich does not teach ‘generating a report including machine readable indicia indicative of a medical item prescribed for a patient, wherein the report further includes information indicative of the patient.’” Further, on page 15 of the brief, appellants argue:

As previously discussed, Gombrich does not teach "generating a report." Additionally, a bar code label on a drug package would not constitute the recited report. Even if Gombrich had a bar code on a drug package, there is no evidence that the drug package further includes information indicative of the patient. Gombrich does not teach a report including both machine readable indicia indicative of a medical item prescribed for a patient and further information indicative of the patient. Gombrich's drug packages do not contain patient information. Gombrich's drug packages are generic and are not assigned to any particular patient. In Gombrich the patient'[s] identification information is on the patient's prescription (col. 13, lines 57-59). The Action admits (and relies on) such teaching in Gombrich in the allegation of step (d).

We are not persuaded by appellants' argument. As discussed *supra*, with respect to claim 4, we consider Gombrich's teaching of labels with information thereon to meet the claimed "report". Further, as discussed *supra* with respect to claim 12, we find that Gombrich teaches the labels on the drugs, contain machine readable indicia identifying both drug and patient. Accordingly, we find ample evidence to support the examiner's finding that Gombrich teaches the limitations of claim 16 and we sustain the examiner's rejection of claim 16 under 35 U.S.C. § 102 (b) as being anticipated by Gombrich.

#### **Rejection of claim 26.**

Appellants argue, on pages 18 and 19 of the brief, that Gombrich does not teach storing data at a bedside terminal. Appellants assert that Gombrich's terminals 45 are at the nurse's station which is not at a bedside location. Further, on page 19 of the brief, appellants assert that the Gombrich teaches other terminals such as in the pharmacist area. However, they are not at a bedside location. Appellants present similar arguments on pages 11 through 13 of the reply brief.

While we agree that the terminal at the nurse's station and the terminal in the pharmacist area are not bedside terminals, we do find that Gombrich teaches bedside terminals. As noted *supra* with respect to claim 4, we find that Gombrich teaches portable terminals. These portable terminals communicate with a base unit. See item 55 figure 1. Gombrich teaches that the portable terminals are "located in every patient['s]

room along with a base unit.” Thus we find ample evidence to support the examiner’s finding that Gombrich teaches bedside units.

Further, we are not persuaded by appellants’ argument, on page 19 of the brief, that Gombrich does not teach limitation (e) of claim 26, i.e. “storing in the data store, data representative that the at least one medical item has been taken for use by the one patient.” As stated *supra* with respect to claim 4, we find ample evidence to support the examiner’s finding that Gombrich teaches storing data representative of at least one medical item being taken for use by the patient.

Appellants’ arguments on pages 19 and 20 of the brief, concerning claim 27 rely upon similar rationale and are similarly unconvincing.

For the forgoing reasons we are not convinced of error in the examiner’s rejection of claims 26 and 27. Accordingly, we sustain the examiner’s rejection of claims 26 and 27 under 35 U.S.C. § 102 (b) as being anticipated by Gombrich.

### **Rejections Under 35 U.S.C. § 103**

#### **Rejection of Claim 1**

Regarding claim 1, appellants argue on page 21 of the brief, that the combination of Gombrich and Moulding do not disclose or suggest the limitation of generating a report including machine readable indicia corresponding to at least one of the patients and at least one item prescribed for the patient. Appellants argue, on page 22 of the brief, that Gombrich does not teach a report and that even if the documents generated in Gombrich’s system were considered to be a report, Gombrich does not teach that the documents include both machine readable indicia corresponding to the patient and machine readable indicia corresponding to the at least one item prescribed for the patient. Appellants further assert, on pages 21 and 22 of the brief, that Moulding is directed to a method of opening a package of medicine and does not teach generating a report. Appellants present similar arguments on pages 13 through 16 of the reply brief.

We are not persuaded by appellant's arguments directed to claim 1. As stated *supra* we find that Gombrich does teach generating a report which contains both machine readable indicia corresponding to the patient and machine readable indicia related to the item. Furthermore, we consider Moulding's teaching of machine readable indicia on the medicine package to be cumulative of the Gombrich's teaching. Moulding teaches a method of packaging medications wherein the package contains machine readable code. See abstract. The system makes use of a special package opening device (cutting machine) which reads the code and opens the package if the medication is proper for the patient. See column 1, line 62 through columns 2, line 6. Thus, appellants' arguments have not convinced us of error in the examiner's rejection of claim 1 under 35 U.S.C. § 103. Accordingly, we sustain the examiner's rejection of claim 1 under 35 U.S.C. § 103 (a) as being unpatentable over Gombrich in view of Moulding.

#### **Rejection of Claim 2.**

Appellants argue, on page 24 of the brief, that: "neither Gombrich nor Moulding, taken alone or in combination, disclose or suggest a report including both readable indicia corresponding to at least one of the patients and machine readable indicia corresponding to at least one item prescribed for the patient. Nor has the Office established a *prima facie* showing of obviousness." Appellants present similar arguments on page 16 of the reply brief.

As discussed *supra*, we find that Gombrich does teach a "report including both readable indicia corresponding to at least one of the patients and machine readable indicia corresponding to at least one item prescribed for the patient." Thus, appellants' arguments have not persuaded us of error in the examiner's rejection of claim 1 and sustain the examiner's rejection of claim 2 under 35 U.S.C. § 103 (a) as being unpatentable over Gombrich in view of Moulding.

**Rejection of claims 3, 5, 14, 15 and 28.**

Appellants state on page 25 of the brief:

Claim 3 depends from claim 1. Appellants' arguments in support of the patentability of claim 1 are incorporated herein by reference. Neither of the applied references, taken alone or in combination, further [sic] do not teach or suggest inputting data representative of giving a medical item through an input device adjacent the bed of a patient in the manner recited. The Office has not established a *prima facie* showing of obviousness.

On pages 25 and 26 of the brief, appellants make similar statements directed to claims 5, 14, 15 and 28 which merely point out the differences in what the claims cover.

We do not consider this to be a separate argument under 37 C.F.R § 1.192(c).

37 C.F.R § 1.192(c) states:

For each ground of rejection which appellant contests and which applies to a group of two or more claims, the Board shall select a single claim from the group and shall decide the appeal as to the ground of rejection on the basis of that claim alone unless a statement is included that the claims of the group do not stand or fall together and, in the argument under paragraph (c) (8) of this section, appellant explains why the claims of the group are believed to be separately patentable. Merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable

Nonetheless, the examiner has made specific findings on pages 10 and 11 of the answer concerning the teachings of Gombrich and the limitations of claims 3, 5, 14 and 15.

Appellants' statements on pages 25 and 26 of the brief do not address the examiner's findings. Further, as discussed *supra* we find that Gombrich teaches the limitations of: inputting data representative of the medical item being taken and given to the patient; the a bed-side terminal; and the report containing machine readable indicia. Thus, we are not persuaded of an error in the examiner's rejection of claims 3, 5, 14, 15 and 28.

Accordingly, we sustain the examiner's rejection of 3, 5, 14, 15 and 28 under 35 U.S.C. § 103(a) as being unpatentable over Gombrich in view of Moulding.

**Rejection of claim 9.**

With regard to claim 9, appellants argue on page 27 of the brief:

Gombrich does not teach or suggest a bed label attached to a bed of a patient, nor reading machine readable indicia on the bed label with a reading device. The Office has not established a *prima facie* showing of obviousness. The record lacks substantial evidence support. *In re Zurko*, supra. The Action is devoid of any teaching, suggestion, or motivation for modifying Gombrich to have produced the recited invention. It would not have been obvious to one having ordinary skill in the art to have modified the teaching of Gombrich to have produced the recited invention.

On page 11 of the answer the examiner finds that placing one of the labels of Gombrich on the patient's bed would have been obvious to one skilled in the art. We concur. Gombrich teaches that a sheet of labels are created and that these labels are to be placed on hospital items used by the patient. See column 8 lines 31 through 33. One skilled in the art would consider the patient's bed to be a hospital supply that is being used by a patient. Thus, we find ample evidence of record to support the examiner's finding that the limitations of claim 9 are obvious in view of Gombrich. Accordingly, we sustain the examiner's rejection of claim 9 under 35 U.S.C. § 103(a) as being unpatentable over Gombrich.

**Rejection of claim 10.**

With regard to claim 10, appellants argue on page 27 of the brief, that Gombrich does not teach reading machine readable indicia on a bedside chart.

We disagree. Gombrich teaches in column 8, lines 43 and 44 "a patient identification bar code 51 will appear on the patient's medical chart." Typically such charts are kept by the patient's bedside. Thus, we find ample evidence of record to support the examiner's finding that the limitations claim 10 are obvious in view of Gombrich and we sustain the examiner's rejection of claim 10.

**Rejection of claims 19 and 20.**

On page 27 of the brief and on pages 16 and 17 of the reply brief, appellants argue that Gombrich does not teach dispensing a medical item from a medical item dispenser responsive to reading machine readable indicia on a report. Appellants' assert on page 29 of the brief that the only suggestion for having a medical item dispenser is found in appellants' own disclosure. Appellants present similar arguments with respect to claim 20.

We disagree with appellants arguments and find that Gombrich does teach dispensing a medical item from a medical item dispenser. Claim 19 recites in step (e) "dispensing the at least one medical item from a medical item dispenser responsive to reading machine readable indicia on a report in step (d)." We note that claim 19 does not recite that a device performs the claimed method steps, and as such encompasses method steps performed by a human. As discussed *supra* in Gombrich's system when unique drugs are made up, such as a custom IV, a label with machine readable code is also prepared. See column 14, lines 7 through 21. Although not disclosed in Gombrich, it is known to those skilled in the art that IV's are contained in an IV bag which dispenses the drug. Further, Gombrich teaches that prior to the nurse administering drugs, the nurse scans the label on the medication and if no discrepancies are noted, the system will prompt the nurse to administer the drug to the patient. See column 15, lines 9 through 20 and lines 58 through 62. This prompt is responsive to the nurse scanning the label on the medicine. Thus, we consider that one skilled in the art would recognize that Gombrich teaches that when a custom IV is made, it has a label with machine readable code, and when the nurse is preparing to administer the IV (medical item) from the IV bag (medical item container) the nurse scans the label and in response to the scanning is prompted to administer the IV (medical item) from the IV bag (medical item container). Further, with respect to claim 20 as discussed *supra*, Gombrich teaches that administration of the drug is automatically recorded if there is a green light (the light that prompts the nurse to

administer the medical item). Thus, we find ample evidence of record to support the examiner's finding that the limitations of claims 19 and 20 are obvious over Gombrich.

**Rejection of claim 21.**

Appellants argue, on pages 30 and 31 of the brief, that Gombrich does not teach or suggest dispensing a medical item responsive to the determination that the inputted user data corresponds to an authorized user and storing the data.

We concur with appellants. Claim 21 recites "wherein the step of dispensing the at least one medical item is carried out responsive to the determination that the input user data corresponds to one authorized user" which further limits the claim 19 limitation of "dispensing the at least one medical item from a medical item dispenser responsive to reading machine readable indicia on a report in step (d)." While Gombrich does teach, recording information from an authorized user in conjunction with the administration of drugs as discussed *supra* with respect to claim 19, we do not find that the dispensing is responsive to a determination that the user is an authorized user. Further, Gombrich also teaches using identification of users to track the drugs in a user's inventory, however this is not in response to reading machine readable indicia on a report. See discussion of "nurses inventory" in column 17, lines 1 through 34. Accordingly, we will not sustain the examiner's rejection of claim 21.

### Conclusion

In summary, we sustain the examiner's rejection of Claims 4, 6 through 8, 11 through 13, 16 through 18 and 22 through 27 stand rejected under 35 U.S.C. § 102 (b) and the examiner's rejection of claims 1 through 3, 5, 9, 10, 14, 15, 19 through 20, and 28 under 35 U.S.C. § 103. However, we will not sustain the examiner's rejection of claim 21 under 35 U.S.C. § 103. The decision of the examiner is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv).

### AFFIRMED-IN-PART

<i>Terry J. Owens</i> TERRY J. OWENS Administrative Patent Judge	)	
<i>Stuart S. Levy</i> STUART S. LEVY Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
<i>Robert E. Nappi</i> ROBERT E. NAPPI Administrative Patent Judge	)	

REN/vsh

Appeal No. 2006-1861  
Application No. 09/428,035

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